**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**COMPANY PETITION NO.759 OF 2003**

. In the matter of Sections 433, 434 and 439 of the Companies Act, 1956;

AND

. In the matter of winding up of G.M. BREWERIES LTD.

Haldyn Glass Gujarat Ltd. ..... Petitioners

Shri D.J. Kambhatta i/b. Amarchand and Mangaldas and Suresh A. Shroff and Co. for the petitioner.
Shri M.S. Udeshi for the company.

**CORAM: S.U. KAMDAR, J.**

**DATE : 4TH FEBRUARY, 2005.**

**P.C. :**

1. The present petition is filed for recovery of the amount due and payable under various invoices and interest thereon as more specifically set out in Particulars of claim being Exhibit-2 to the petition. The aggregated claim in the petition is that of the principal amount of Rs.34,63,698.35/-, T.D.S. amount of Rs.4,26,544/- and an interest amount of

Rs.49,51,341.94/- aggregating to sum of Rs.88,41,584.29/-. The claim of the petitioner arises out of supply of empty bottles to the company for their requirement to manufacture different kinds of liquors. The learned counsel for the petitioner submits that in view of non-payment of dues a statutory notice was given. In reply thereof a dispute was raised by the company in respect of the said claim alleging an agreement to emborse a logo on the bottles before effecting the supply thereof to the company. According to the learned counsel for the petitioner there is no bonafide dispute in so far as the aforesaid claim is concerned and therefore the present petition should be admitted.

2. On the other hand the learned counsel for the respondent company has inter-alia raised two disputes. He has pointed out that in para-6(ii) it was agreed between the parties the admitted position of the petitioner itself that the liability to pay interest would not arise for a period of 120 days. However in the computation of interest mentioned in the particulars of claim the interest has been claimed

even in respect of the amount without giving the credit of 120 days. He has taken me through number of items in respect of the interest payable on delayed items which prima-facie shows that there are discrepancies in respect of computation of interest. The learned counsel for the petitioner however submits that there are discrepancies in the computation of interest. He contends that the said discrepancy is restricted only to three debit notes no. 58, 118 and 149 which aggregates to Rs.6,42,48.31/-. In so far as the third debit note is concerned there are only typographical errors. Further the claim raised in respect of the interest is the correct computed claim. In so far as the TDS amount is concerned the learned counsel for the petitioner states that it is a disputed claim and therefore the same should be ignored.

3. On the other hand the learned counsel for the respondent company has expressed his willingness to deposit the principal amount of Rs.34,63,698.35/- and has contended that in so far as the balance claim is concerned there are serious bonafide disputes and

therefore the present petition should not be entertained. I have considered the rival submissions and in my opinion as far as the TDS amount is concerned there are admitted disputes and therefore the amount is excluded. In so far as the interest is concerned he has vehemently contended that only the third debit note should be excluded and so far as the balance amount is concerned the respondent company should be directed to deposit the same. In my opinion even if there are errors the said interest claimed is required to be proved by trial. I am of the opinion that there are serious discrepancies in respect of the said claim. I have perused the particulars of claim pertaining to the interest set out in page 18 to 40 and I find that in large number of items there are serious discrepancies. In view of the serious disputes I am not inclined to pass any order in so far as the interest amount is concerned. In view of the fact that that the respondent is willing to deposit the aforesaid balance amount I pass the following order.

(i) The respondent company to deposit

Rs.34,63,698.35/- within a period of four weeks. On such deposit being made, the advocate for the respondent company to communicate the petitioner of the fact of such deposit.

(ii) The petitioner to file a suit if such deposit is made within a period of four weeks from the date of communication of such deposit being made by the advocate of the respondent company.

(iii) In an event of suit being filed the amount deposited to be transferred to the credit of the suit and to be invested in fixed deposit in any nationalised bank initially for a period of three years and renew the same from time to time.

(iv) In an event of the petitioner filing a suit within the prescribed time then the respondent company will be entitled to withdrew the said amount from the office of Prothonotary

and Senior Master, High Court, Bombay.

(v) In an event if such deposit is not made then the company petition to stand advertised.

3. It is made clear that the present order will be without prejudice to the rights and contentions of the parties in suit already filed by the respondent company and the proposed suit to be filed by the petitioner herein.

sd/-

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